IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 127 OF 2002.

M/s. Balraj Sud, a
registered partnership
with office at Chicalim,
Goa. ... Petitioners.

Versus

Union of India through
Chief Engineer, Cochin Zone,
represented by Commander Works
Engineer (p), Military
Engineering Services, Panaji. ... Respondent.

Mr. C. Mascarenhas, Advocate for the Petitioners.

Mr. V.P. Thali, Addl. Senior Central Government
Standing Counsel for the Respondent.

Coram: P.V. HARDAS, J.

Date: 18th July 2002.

ORAL JUDGMENT.

This Civil Revision Application has been filed against the Order of the Civil Judge, Senior Division, Vasco da Gama, dated 15th February 2002, passed in Civil Miscellaneous Application No. 112/2001/A in Civil Miscellaneous Application No. 127/1991/A. The aforesaid application had been filed by the petitioners seeking review of the Order dated 10th May 2001, passed by the trial Court, granting interest pendente lite from 15th May 1988 to 1st August 1991 at the rate of 18% p.a.

2. It is needless to refer to the other facts, suffice to hold that the application for review, filed

by the petitioners, was dismissed by the learned trial Court after holding that, as per Order XLVII, Rule 1 of Civil Procedure Code, since an appeal had been filed against the Order, the Court was divested of its power of reviewing its earlier Order dated 10th May 2001.

3. Mr. Mascarenhas, the learned counsel appearing for the petitioners, has placed reliance on a recent Judgment of the Supreme Court in **Kunhayammed and others v. State of Kerala and another**, A.I.R. 2000 S.C. 2587 and has urged that the crucial date for determining whether or not the terms of Order XLVII, Rule 1(1) of Civil Procedure Code is the date when the application for review is filed. If on the day the application for review is filed, no appeal has been preferred, the Court is competent to decide the application for review on merits.

4. Mr. Thali, the learned Additional Senior Central Government Standing Counsel, in vain tried to support the Order of the learned trial Court.

5. It appears that the ratio of the aforesaid Judgment of the Apex Court was not brought to the notice of the learned trial Court when the learned trial Court heard and decided the application for review. The learned trial Court has merely dismissed

the application of the petitioners without examining the application on merits. In view of this, the Order of the learned trial Court is unsustainable and the matter deserves to be remitted to the learned trial Court for decision afresh, in view of the decision of the Apex Court cited supra.

6. In the result, therefore, the Order impugned, dated 15th February 2002, is, hereby, quashed and set aside. The matter be remitted to the learned trial Court and the learned trial Court to decide Civil Miscellaneous Application No. 112/2001/A afresh on merits as expeditiously as possible. Civil Revision Application is, therefore, allowed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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